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IN THE

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NO.

ANTONIO JAMES,
Petitioner

Versus

STATE OF LOUISIANA,
Respondent

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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I S S U E

WAS PETITIONER DENIED HIS RIGHT TO AN IMPARTIAL JURY WHEN THE TRIAL JUDGE DISMISSED A PROSPECTIVE JUROR ON WITHERSPOON GROUNDS?

ARGUMENT

Petitioner alleges that his constitutional rights were violated when the trial judge dismissed a prospective juror for cause during the defense voir dire since the dismissal may have limited the defense's opportunity to rehabilitate the juror. Respondent avers that:

1) The trial judge acted correctly under Louisiana law and under the standard set forth in Witherspoon v. Illinois, 391 U.S. 510, 88 S.Ct. 2770, 20 L.Ed.2d 776 (1968), and

2) If an erroneous challenge for cause was allowed, the petitioner was not prejudiced in that the State had used only eleven of its twelve peremptory challenges at the time of the dismissal of the juror.

Witherspoon and its progeny hold that the death penalty should not be imposed upon a defendant tried by a jury from which potential jurors who voiced a general objection to the death penalty were excluded. Witherspoon makes it clear that the exclusion must result from the venireman's unambiguous statements that he would automatically vote against the imposition of capital punishment no matter what the evidence or the applicable law.

The Louisiana statute, unlike the Illinois statute which occasioned the Witherspoon decision, requires more than the expression of mere scruples or qualms on the part of the juror to warrant dismissal for cause:

> Causes for challenge by the state
>
> It is good cause for challenge on the part of the state, but not on the part of the defendant, that:
>
> (1) The juror is biased against the enforcement of the statute charged to have been violated, or is of the fixed opinion that the statute is invalid or unconstitutional;
>
> (2) The juror tendered in a capital case who has conscientious scruples against the infliction of capital punishment and makes it unmistakably clear (a) that he would automatically vote against

the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before him, or (b) that his attitude toward the death penalty would prevent him from making an impartial decision as to the defendant's guilt; or

(3) The juror would not convict upon circumstantial evidence.

Louisiana Code of Criminal Procedure Art. 798

The trial record of the case before this Honorable Court reflects the following exchange during voir dire:

BY MR. JOHNSON [defense counse]:

Mr. Hitts, the statutory fact that you would only consider the death penalty after the jury reached a unanimous verdict of guilty as charged, would that in your mind have any persuasive effect as to your ability to--then and only then at that time would you consider a death penalty, which is a remote possibility?

BY THE PROSPECTIVE JUROR HITTS:

I couldn't accept it at all.

BY MR. JOHNSON:

There's no circumstances under which you would consider it?

BY THE PROSPECTIVE JUROR HITTS:

I couldn't accept the death penalty at all.

BY MR. PADDISON:

Reurge my challenge.

BY THE COURT:

Challenge for cause. You're excused, sir.

BY MR. PADDISON:

Ms. Narcisse, you're shaking your head. You've got the same problem?

BY THE PROSPECTIVE JUROR NARCISSE:

Same problem.

BY MR. PADDISON:

I have to ask you these questions. Bear with me. I'm not trying to pry. Regardless of what the statute says basically because of this feeling you couldn't apply the law?

BY THE PROSPECTIVE JUROR NARCISSE:

No.

BY MR. PADDISON:

Has it been a longstanding personal scruple on your part?

BY THE PROSPECTIVE JUROR NARCISSE:

I just don't believe in it.

BY MR. PADDISON:

And you've had it a long time?

BY PROSPECTIVE JUROR NARCISSE:

Long enough. I just don't believe in it.

BY MR. PADDISON:

All right. Are there any circumstances you could envision, regardless of whether or not it fit the statute, regardless of whether or not our legislature says that you should do it under these circumstances, is there any circumstance you could consider recommeding the death penalty?

BY PROSPECTIVE JUROR HARCISSE:

I just don't believe in it.

BY MR. PADDISON:

Thank you very much, Ms. Narcisse. Challenge for cause.

BY MR. JOHNSON:

Ms. Narcisse, again, if you would only consider the fact that this is a possibility and a remote one at that--

BY MR. PADDISON:

Object to his characterization of anything being remote in this case.

BY MR. JOHNSON:

Your Honor, I've asked that question a number of times before.

BY MR. PADDISON:

Well, I'm objecting.

BY THE COURT:

Finish the question.

BY MR. JOHNSON:

Considering the fact, Ms. Narcisse, that this is one of an alternative number of verdicts and a case where it would only occur after you reached a verdict unanimously with eleven other jurors for a guilty as charged verdict. And then and only then would you consider that particular sentencing verdict as an alternative. Would that in your mind because of the remoteness of that possibility change your ability to consider this--

BY MR. PADDISON:

I reurge my objection.

BY THE COURT:

I'll excuse her for cause.

Prospective juror Narcisse was in agreement with the prior candidate who stated that he could not accept capital punishment at all. Mrs. Narcisse stated that she could not apply the law and repeatedly stated that she did not believe in capital punishment. Her statements were unambiguous and unmistakably clear within the meaning of both Article 798 and the Witherspoon guidelines, to wit: she would not vote to impose the death penalty even in the light of evidence which might be developed in the trial or in consideration of the law governing the case. Her statements reflect more than just a general objection or scruples regarding capital punishment. This juror was therefore properly excused for cause by the trial judge who acted fully within his discretion and in compliance with the demands of fundamental fairness.

Petitioner alleges that it was error for the trial judge to discontinue the defense voir dire which had the effect of limiting his opportunity to rehabilitate the witness. Under the applicable Louisiana statute an erroneous allowance to the State of a challenge for cause does not afford the defendant a ground for complaint unless the effect of such a ruling is the exercise by the State of more peremptory challenges than it is entitled to by law. La.C.Cr.P. Art. 800. Because the instant offense was one punishable by death, the State was allowed twelve peremptory challenges, La.C.Cr.P. Art. 799, and the record reflects that the State exercised only eleven of those challenges. Therefore the defendant may not complain of the allegedly improper grant of the State's challenge for cause. State v. Edwards, 406 So.2d 1331, cert. denied 102 S.Ct. 2011 (1981), State v. Jones, 408 So.2d 1285 (1982), State v. Matthe-son, 407 So2d 1150 (1981).

Moreover, as pointed out in State v. Edwards, supra, where the State has not used all of its peremptory challenges, the defendant must show that the alleged erroneous challenge for cause was in fact erroneously granted in order to have any basis for the complaint. In the instant case, the juror was properly discharged, hence there is no merit to petitioner's claim.

CONCLUSION

For the foregoing reasons, respondent avers that the petitioner's claim of error is without merit and therefore prays that certiorari be denied.

Respectfully submitted,

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I certify that a copy of this Supplemental Brief In Opposition To Petition for Writ of Certiorari to the Supreme Court of Louisiana has been served upon:

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